(37)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 256

A. A. SEKT,

Petitioner,

vs.

THE JUSTICE'S COURT OF SAN RAFAEL TOWNSHIP, COUNTY OF MARIN, STATE OF CALIFORNIA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA AND BRIEF IN SUPPORT THEREOF.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA AND BRIEF IN SUPPORT THEREOF.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of A. A. Sekt respectfully shows:

Summary and Short Statement of Matter Involved

Petitioner was charged by *complaint* and convicted in February, 1943, in the respondent Court of violating section 182 of the Penal Code of the State of California by conspiring to violate section of 153 of the Penal Code of California, said violation being a misdemeanor.

An appeal was perfected to the Superior Court of Marin County, State of California, in October, 1944, where the conviction was sustained. At said appeal, the question now involved was raised. While still at liberty on bail, and pending appeal, and before affirmance of said judgment by the Superior Court above, the legislature of the State of California amended section 182 of the Penal Code of California, making it a felony to conspire to violate section 153 of the Penal Code, which was effective before affirmance by the Superior Court. That by the amendment passed, the legislature repealed the law under which defendant was charged, tried and convicted, said repeal being without a savings clause as to offenses committed prior to said amendment and repeal. Thereupon, application for permanent writ of prohibition was made to the Supreme Court of the State of California on the grounds that the respondent Court was without jurisdiction to enforce the judgment originally entered and that its enforcement would be the enforcement of an ex-post facto law as regards petitioner. This was denied on April 27, 1945.

Stay order has been issued by the Supreme Court of California pending this petition for a writ of certiorari. The Supreme Court of California by unanimous opinion held that as a matter of law, section 9608 of the Government Code operated as a general savings clause saving prosecution and punishment of *misdemeanors* instituted by *complaint* in the Justice of the Peace Court as well as a general savings clause saving the prosecution and punishment of *felonies* instituted by *indictment* or *information* as set out in said section, which reads as follows: "The termination or suspension (by whatever means effected) of any law creating a criminal offense does not constitute a bar to the *indictment* or *information* and punishment of an act already committed in violation of the law so ter-

minated or suspended, unless the intention to bar such indictment or information and punishment is expressly declared by an applicable provision of the law."

Petitioner contends that section 9608 of the Government Code of California does not save prosecution and punishment of crimes charged by *complaint* in a Justice of Peace Court, but operates solely, if it does, only as a general savings clause for those crimes specifically charged by *indictment* or *information,* specifically set out therein. Any other interpretation would violate Article 1, Sec. 9, par. 3, U. S. Constitution. (*Ong Chang Wing* v. *United States,* 218 U. S. 272 (31 S. Ct. 15, 15 L. Ed. 1040).) It is submitted that criminal statutes must be strictly construed, and where a statute specifically refers to what crimes and punishment are saved under a savings clause, only those contained therein are saved.

Jurisdictional Statement

(a) Jurisdiction to grant this petition is sustained under (A) 237 Judicial Code, U. S. A. (B), 28 U. S. C. A. 344.

(b) The constitutional provision of the United States denied by the Supreme Court of California is Art. 1, Section 9, par. 3, U. S. A.

(c) The judgment of the Supreme Court of California was rendered on April 27, 1945. Petition for rehearing was not filed due to lapse of statutory time. Petition for certiorari was filed July 24, 1945.

Questions Presented

The question presented is whether the Supreme Court of California denied petitioner his constitutional rights under Article 1, Section 9, para. 3 of the Constitution of the United States and whether the application made by it is inconsistent with the applicable decisions of the Su-

preme Court of the United States, in that the Supreme Court of California held that Section 9608 of the Government Code did not operate as an ex-post facto law insofar as petitioner is concerned, and therefore was no denial of his constitutional rights under Art. 1, Sec. 9, Par. 3 of the Constitution of the United States.

Reasons Relied On for Allowance of Writ

The Supreme Court of California has decided a question of substance and importance in a way not in accord with the applicable decisions of the Supreme Court of the United States. If inferences are to be drawn from statutes where the legislature has specifically set out what prosecutions shall be saved, then criminal statutes should be, and must be construed in that manner, and where there is a repeal of a criminal statute, with no savings clause, one cannot be inferred. Any enforcement of a judgment of this kind would be void, and a violation of petitioners' constitutional rights.

WHEREFORE, your petitioner prays that a writ of certiorari be issued by this Court to the Supreme Court of California, to the end that the judgment of said court may be reviewed by this Honorable Court.

ALAN W. DAVIDSON,
Counsel for Petitioner.